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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,463	07/11/2001	Andrew P. Levy	01/22194	5455

7590 05/24/2004

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EXAMINER

SNEDDEN, SHERIDAN

ART UNIT PAPER NUMBER

1653

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/903,463	LEVY, ANDREW P.	
	Examiner	Art Unit	
	Sheridan K Snedden	1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-197 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 and 38-197 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-14, 17-20, 24-28 and 31-34 is/are rejected.
- 7) ☒ Claim(s) 15, 16, 21-23, 29, 30 and 35-37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/4/03, 1/29/02.</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election of invention II, claims 10-37 is acknowledged. Claims 1-9 and 38-197 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 10-37 are under examination.

Claim Objections

2. Claims 21-23, 35-37 are objected to because of the following informalities: the claims are dependent on rejected claims. Appropriate correction is required.
3. Claims 15-16, 29, 30 are objected to because of the following informalities: the claims should contain the preferred language of "consisting of," or in the alternative "comprising" language, to indicate the scope of the invention. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-28, 31-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claims 24-28, 31-37 are indefinite as the claims are directed to a portion or fragments of the alpha subunit of haptoglobin without clearly defining its relation to the whole. A complete alpha subunit is not defined in a manner that a portion could be easily discerned. What is the whole alpha subunit?

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-14, 17-20, 24-28, 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Haugen *et al.* Haugen *et al.* teach the isolated alpha subunit of haptoglobin with a carrier (regarding claims 10-12, 14, 17, 24-26, 28, 31). Additional elements of claim 1, 14, 24 and 28 refer to the inherent ability of the alpha subunit of haptoglobin of to reduce the oxidation induced by oxygenized hemoglobin. Claims 18-20 and 32-34 contain elements regarding the intended use of the alpha subunit of haptoglobin, which carries no patentable weight. Thus, the reference clearly anticipates the invention as recited in the claims.

6. Claims 24-28, 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldstein *et al.* Goldstein *et al.* teach the carboxy terminus of alpha subunit of haptoglobin with a carrier (regarding claims 24-26, 28, 31). Additional elements of claim 24 and 28 refer to the inherent ability of the alpha subunit of haptoglobin of to reduce the oxidation induced by

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oxygenized hemoglobin. Claims 32-34 contain elements regarding the intended use of the alpha subunit of haptoglobin, which carries no patentable weight. Thus, the reference clearly anticipates the invention as recited in the claims.

Conclusion

7. SEQ ID NO: 19 and 20 are free of the prior art. The polypeptides differ from the prior art at position 20, which is an Arg compared to the Glu taught in the prior art. Furthermore, a solid support is not taught as a carrier in the prior art.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan K Snedden whose telephone number is (571) 272-0959. The examiner can normally be reached on Monday - Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (571) 272-0951. The fax phone number for regular communications to the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SKS
May 3, 2004

SKS



KAREN COCHRANE CARLSON, PH.D.
PRIMARY EXAMINER